

LEGAL PROFESSION PRACTICE (GUARANTEE FUND) BILL.

EXPLANATORY MEMORANDUM.

OBJECT OF THE BILL.

The purpose of the Bill is to amend provisions of the *Legal Profession Practice Act* 1958 (referred to in the Bill and in this memorandum as "the Principal Act") affecting the fund known as the Solicitors' Guarantee Fund established by section 52 of the Principal Act.

The amendments give effect to recommendations made by the special committee, under the chairmanship of Mr. D. Dawson, Q.C., Solicitor-General, which was appointed by the Law Institute of Victoria in November, 1975 to review provisions of the Principal Act referring to auditing and the administration of the Solicitors' Guarantee Fund.

CLAUSES OF THE BILL.

Clause 1.

Is the citation and commencement provision.

Clause 2.

Sub-clause (1) amends section 39 of the Principal Act to insert a number of new interpretations for the purpose of defining expressions used in the later provisions of the Bill.

Sub-clause (2) substitutes new sub-sections (2C), (2CA), (2CB) and (2CC) for section 40 (2C) of the Principal Act. The existing section 40 (2C), after making provision in terms similar to the proposed sub-section (2C), goes on to provide that pending repayment such moneys shall be invested either upon deposit with a bank or upon loan to the Treasurer.

The effect of the proposed sub-section (2CA) is to extend the present range of investments to the additional securities described in the definition of "authorized investment" in sub-clause (1) of clause 2 of the Bill.

It will be noted that the proposed sub-section (2CB), while permitting investment in bearer securities, requires such securities to be deposited for safe custody with a bank, pending sale or maturity. The proposed sub-section (2CC) provides that the Law Institute shall not be responsible for any loss incurred by reason of such deposit, and that the cost of deposit and collection shall be debited against the Income Suspense Account—this account is dealt with in the comments on clause 3 of the Bill.

Clause 3.

This clause substitutes new sections 53, 54 and 55 for the existing sections 53 to 55A of the Principal Act. The existing sections deal with the following matters—

Section 53 : The requirement to keep the moneys constituting the Solicitors' Guarantee Fund (hereinafter called "the Fund") in a separate bank account, pending investment or application in accordance with the Act.

Section 54 : The moneys which constitute the Fund.

Section 55 : The payment which may be made out of the Fund.

Section 55A : The payment of certain moneys from the Fund to the credit of the Victoria Law Foundation and to the Treasurer of Victoria as a contribution towards the costs of legal aid to the public.

The proposed sections make provision as follows:—

Proposed section 53.

Sub-section (1). Three accounts are to be established in the Fund—

- (a) the Income Suspense Account ;
- (b) the Fidelity Account ;
- (c) the Victoria Law Foundation Account.

Sub-section (2). Pending investment or application in accordance with the Act the moneys constituting the Fund are to be placed in a separate bank account called the Solicitors' Guarantee Fund Capital Investment Account. This provision re-enacts the substance of the present section 53.

Sub-section (3) deals with moneys to be credited to the Income Suspense Account. These moneys are substantially the same as those referred to in the existing sections 40 (2D) and 54 of the Principal Act, but do not include the sums or moneys referred to in paragraphs (c) and (d) of the existing section 54.

Sub-section (4) specifies the items to be debited to the Income Suspense Account. Paragraphs (a) to (d) of the sub-section re-enact paragraphs (c) to (f) of the existing section 55 ; paragraph (e) of the sub-section also provides for the debit of losses incurred on the realization or revaluation of investments.

Sub-section (5) is concerned with moneys to be credited to the Fidelity Account. Paragraph (a) is a new provision, while paragraph (b) re-enacts the substance of paragraph (d) of the existing section 54.

Sub-section (6) specifies the items to be debited to the Fidelity Account. There are the amounts and expenses provided for by paragraphs (a) and (b) of the existing section 55, together with amounts paid out of the Fund under the existing section 55B. This section deals with certain payments to the trustee in bankruptcy, trustee under an arrangement under the Bankruptcy Act or receiver of a company, in cases of defalcation by a solicitor.

Sub-section (7) provides for crediting to the Victoria Law Foundation Account on or before 30 September in each year such amount, being not less than 5 per cent. and not more than 10 per cent. of the amount in the Income Suspense Account on the preceding 30th day of June, as the Attorney-General directs or in default of direction as the Law Institute Council determines.

Sub-section (8) re-enacts without substantive amendment the provisions of the existing section 55A (4).

Sub-section (9) requires that there shall be debited to the Income Suspense Account, on or about 30 September in each year, a payment to the Treasurer of Victoria as a contribution towards the costs incurred by the State in providing legal aid to the public. The sub-section provides for determination of the amount in similar manner to sub-section (7) but in this case the range of percentages is 10 per cent. to 15 per cent.

Sub-section (10) provides for crediting to the Fidelity Account the amount standing to the credit of the Income Suspense Account on the preceding 30 June, after deducting the amounts determined under sub-sections (7) and (9).

Sub-section (11) makes provision for excess moneys in the Fidelity Account to be paid to the Treasurer as a further contribution towards the cost of legal aid. The excess is the amount standing to the credit of the Fidelity Account on the preceding 1 July, after allowing for all ascertained or contingent liabilities of the Fund, other than a contingent liability under section 40 (2C) for repayment of moneys deposited by a solicitor with the Institute.

When the excess is between \$3 million and \$4 million such payment to the Treasurer is at the discretion of the Council, but where the excess is over \$4 million the Council is obliged to pay an amount equal to the excess to the Treasurer.

Sub-section (12) enables the Council at any time during the financial year to make advances to the Victoria Law Foundation and the Treasurer on account of the amounts to which they will respectively become entitled under sub-sections (7) and (9).

Proposed Section 54.

This provision enables the making of payments to the Victoria Law Foundation or to the Treasurer by way of advances against moneys that will become payable under the Act.

Sub-section (1) provides for such advances to be made either at the discretion of the Law Institute Council or on a mandatory basis when the Attorney-General requests that an advance be made.

Sub-section (2) makes provision for the terms of repayment of advances and provides that repayment shall be guaranteed by the Treasurer.

Sub-section (3) enables the Institute to borrow from a bank upon the security of the Fund, and provides for a guarantee of repayment by the Treasurer, at his discretion.

Sub-section (4) provides that moneys borrowed under sub-section (3) shall be credited to the Fidelity Account or the Income Suspense Account as determined by the Council of the Institute, and that any repayment and interest shall be debited to the latter account.

Section 55 sets out the conditions applicable to any guarantee by the Treasurer of repayment of any loan to the Institute.

Clause 4.

Sub-clause (1) amends section 63 of the Principal Act, the effect of which is that moneys in the Solicitors' Guarantee Fund not immediately required for its purposes may be invested in investments authorized by the Trustee Act. However, the special committee referred to at the beginning of this memorandum has recommended that section 63 should be amended to make it consistent with the proposed section 40 (2CA) of the Act, and the sub-clause makes the appropriate amendment.

Sub-clause (2) amends section 64 of the Principal Act to correct an unintended result of the existing sub-sections (5) and (6) of section 64. Sub-section (6) provides for the payment to a claimant of interest from the date of a defalcation on moneys payable under the section. However, sub-section (5) in its present form includes the reasonable costs and disbursements incurred by a claimant incidental to the making and proof of his claim, which are incurred at a much later point in time than the date of the defalcation.

In the circumstances, clause 4 (2) proposes the repeal of the relevant expression in section 64 (5) and the substitution of a new section 64 (7) which deals specifically with the costs and disbursements relating to the making and proof of a claim. The existing section 64 (7) relates to the operative date of amendments introduced in 1966 by Act No. 7472, and was concerned particularly with outstanding claims as at 1 April 1965—this provision is spent, as the need for it no longer exists.

Sub-clause (3) makes a consequential amendment of section 10 (2) (a) of the *Legal Aid Act 1969*, which requires that there shall be paid into the Legal Aid Fund all moneys payable to the Treasurer pursuant to section 55A (3) of the *Legal Profession Practice Act*. Section 55A has been replaced by provisions substituted by clause 3 of the Bill, and the present sub-clause makes the necessary amendment.

Clause 5.

Is a transitional provision, and sub-clause (1) suspends until 1 July, 1979 the operation of section 54 and the provisions of the proposed section 53 for payments to the Victoria Law Foundation and to the Treasurer in relation to legal aid. The purpose of this provision is to ensure that the amendments in the Bill will not significantly inhibit, or delay, payment of outstanding claims against the Solicitors' Guarantee Fund.

However, there is a need to enable the Victoria Law Foundation to give continued assistance to the Leo Cussen Institute for Continuing Legal Education as well as a need to provide a contribution towards the costs of the State's legal aid arrangements ; the clause enables the Law Institute to borrow moneys on the security of the Fund so that payments can be made in 1977 and 1978 to the Foundation and the Treasurer. Thereafter, the provisions of the Bill should ensure regular payments to the Foundation and to the Treasurer.

Sub-clause (1), as mentioned above, suspends the operation of certain provisions of section 53 until 1 July 1979, because of the specific provisions as to borrowing in this clause. For the same reason it also suspends the operation of section 54.

Sub-clause (2) provides for the Law Institute borrowing \$2 million on the security of the Fund, and crediting that amount to an Overdraft Account.

Sub-clause (3) provides for quarterly payments of \$125,000 each to the Victoria Law Foundation and the Treasurer, in each quarter after 1 January, 1977. By virtue of section 10 (2) (a) of the *Legal Aid Act* 1969 any moneys so paid to the Treasurer are to be paid to the Legal Aid Fund.

Sub-clause (4) requires that any moneys paid to the Victoria Law Foundation under the section shall be applied for the purposes of the Leo Cussen Institute.

Sub-clause (5) requires the interest on the overdraft to be paid out of the Solicitors' Guarantee Fund and debited to the Income Suspense Account.

Sub-clause (6) provides that any amount repaid in relation to the overdraft shall be debited to the Income Suspense Account.

Sub-clauses (7) and (8) enable the Treasurer to guarantee the repayment of moneys borrowed under the section, and apply to any guarantee the provisions of the proposed section 55 of the Principal Act.